Rome Electrical Systems, Inc. *and* International Brotherhood of Electrical Workers, Local 613. Case 10–CA–35458

April 12, 2007

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND KIRSANOW

The issue in this case is whether the Respondent, Rome Electrical Systems, Inc., gave timely notice of withdrawal of agency from the multiemployer association that negotiated area collective-bargaining agreements on its behalf. We find, under Board precedent and the terms of the parties' letter of assent and area agreements, that the Respondent's notice was untimely.[1] The Respondent consequently violated Section 8(a)(5) and (1) of the Act by failing to abide by the terms of the successor area agreements and making unilateral changes in terms and conditions of employment of the covered employees.

On the entire stipulated record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

Rome Electrical Systems, Inc. is a Georgia corporation, with an office and place of business in Rome, Georgia, and is engaged as an electrical contractor in the building and construction industry, providing electrical contracting and related services at various jobsites throughout Georgia. During the 12-month period preceding the issuance of the complaint, the Respondent, in the course of its operations, purchased and received at its Rome, Georgia facility goods valued in excess of $50,000 from other enterprises located in Georgia, each of which other enterprises received these goods directly from points outside Georgia. At all material times, the Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Union, IBEW Local 613, is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. Facts

The Respondent and the Union have had a collective-bargaining relationship for the Respondent's electricians dating from December 1989,[2] when the Respondent signed the Union's "Letter of Assent-A." That agreement authorized the Atlanta Chapter of the National Electrical Contractor Association (the AECA) to be the Respondent's "collective-bargaining representative for all matters contained in or pertaining to the current and any subsequently approved contract between [the AECA] and [the Union]." The letter of assent provided further:

> This authorization . . . shall remain in effect until terminated by the undersigned employer giving written notice to [the AECA] and to [the Union] at least one hundred fifty (150) days prior to the then current anniversary date of the applicable approved labor agreement.

From 1989 until the events at issue, the Respondent remained covered by a series of successive area collective-bargaining agreements that the AECA negotiated with the Union on behalf of its signatory employer members. The two most recent of those collective-bargaining agreements—a 3-year contract, effective from September 1, 2000, to August 31, 2003, and a 1-year extension of that contract, effective from September 1, 2003 to August 31, 2004—included the following provision:

> Section 1.02(a) Either party or an employer withdrawing representation from the Chapter or not represented by the Chapter, desiring to change or terminate this Agreement must provide written notification at least 90 days prior to the expiration date of the Agreement or any anniversary date occurring thereafter.

On September 28, 2003, the Respondent wrote to the Union that "as of November 1, 2003, [it would] terminate [its] affiliation with [the Union] as a Signatory Contractor." By letter dated October 21, 2003, the Union's Business Manager, Lonnie Plott, responded that "[u]nder the terms of the [September 1, 2003—August 31, 2004 extension] agreement, the September 28, 2003 notice

[1] On March 29, 2005, a complaint issued in the above-captioned proceeding, alleging that the Respondent violated Secs. 8(a)(5) and (1) and 8(d) by refusing to bargain in good faith with the Charging Party Union. On May 10, 2005, the General Counsel, the Respondent and the Union filed a joint motion to transfer this proceeding to the Board with a joint stipulation of facts and attached exhibits. In the joint motion, the parties agreed that their joint stipulation and exhibits constitute the entire record in this case, waived a hearing before an administrative law judge, and submitted this case for decision by the Board pursuant to Sec. 102.35(a)(9) of the Board's Rules and Regulations. On April 7, 2006, in an unpublished order, the Board granted the parties' joint motion. The General Counsel and the Respondent filed briefs, and the Respondent filed a responding brief. The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

[2] There is no dispute that, on the basis of the majority-support showing the Union made to the Respondent in 1989, the parties have had a bargaining relationship under Sec. 9(a) of the Act.

was not timely. Pursuant to Section 1.02(a), your firm should have given at least 90 days notice prior to the expiration date of the agreement for termination." On November 20, 2003, the Respondent sent a letter to the Union rescinding its previous notice and stating its "intent to remain as a Signatory Contractor."

On May 27, 2004—i.e., 97 days prior to expiration of the 1-year contract extension—the Respondent wrote to the Union and to the AECA that "[a]s per the September 2003 Agreement, Article 1, Section 1.02, this is . . . written notification to you that as of August 31, 2004 [the Respondent] will be terminating [its] affiliation with Local Union 613 as a Signatory Contractor, and withdrawing from [the AECA]."[3] By reply letter dated June 1, the AECA informed the Respondent that the notice was untimely under the 1989 letter of assent. The AECA also noted that the 90-day notice provision of Section 1.02(a) of the collective-bargaining agreement applied to the termination of that contract.[4]

In subsequent correspondence with the AECA and the Union, the Respondent maintained that its May 27 notice of withdrawal was timely under section 1.02(a) of the area agreements and stated that it was willing to bargain with the Union for an individual contract. The Respondent also asserted that the Union "recognizes" that its withdrawal was timely "as evidenced by [Plott's] letter of October 21, 2003."

The Respondent observed the terms of the extension agreement until August 31. It then unilaterally altered the unit employees' terms of employment, including changing employees' pay rate and discontinuing contributions to the Union's fringe benefit funds.[5] On September 1, the AECA and the Union signed a 3-year area contract extending to August 31, 2007.[6]

B. The Parties' Contentions

The General Counsel contends that the Respondent failed to give timely notice of withdrawal of representation agency from the AECA, that the Respondent consequently remained subject to the agreements the AECA negotiated with the Union, and that the Respondent's unilateral changes in terms of employment were unlawful under Section 8(a)(5). The General Counsel emphasizes that the Board, on many previous occasions, has reviewed and enforced notice requirements in other IBEW letters of assent that were either verbatim or quite similar to the language at issue here. These cases, argues the General Counsel, recognize that an employer's termination of representation agency under the terms of a letter of assent is an action distinct from the termination of a collective-bargaining agreement under the terms of a contract. Consequently, the General Counsel contends, the Respondent's compliance with the contract's 90-day notice requirement for the purpose of terminating or modifying the contract did not equate to compliance with the 150-day notice language in the letter of assent for the purpose of terminating representation agency.

The General Counsel further asserts that Plott's letter to the Respondent of October 21, 2003 provides no basis for estopping the Union from enforcing the letter of assent's 150-day notice requirement or for finding a waiver of the Union's right to enforce. Nor did the letter create any "special circumstances" that would justify not enforcing the 150-day notice requirement.

The Respondent, citing the doctrine of merger in contract law, contends that Section 1.02(a) of the 1-year, September 1, 2004—August 31, 2004 extension contract effectively substituted the 90-day notice period referenced in that section for the 150-day notice period specified in the letter of assent for withdrawal of agency authorization from the AECA. In particular, the Respondent points to the language in section 1.02(a) that requires "an employer withdrawing representation from the Chapter" to give 90 days notice of contract termination. This language, the Respondent asserts, coming later in time and covering the same subject, superseded the "contradictory" and "inconsistent" 150-day notice language in the 1989 letter of assent. The Respondent also asserts that there is a distinction between the assent letter's requirement of notice prior to "the then current anniversary date" of the contract and the contract's requirement of notice prior to "the expiration date of the Agreement or any anniversary date occurring thereafter," which supports the Respondent's reading of the two agreements as inconsistent.

The Respondent also relies on Plott's October 21, 2003 response to its first attempt to "terminate affiliation with Local 613 as a Signatory Contractor." According to the Respondent, Plott's response letter, which stated that "[p]ursuant to Section 1.02(a) [of the contract], your firm should have given at least 90 days notice prior to the

[3] All subsequent dates are in 2004 unless otherwise indicated.

[4] Also on June 1, the Union and the AECA negotiated a second agreement, the Intermediate Journeyman Wireman Program Memorandum of Understanding, running through February 28, 2007. Although the record is unclear as to whether the Respondent has failed to comply with the terms of this memorandum, we find that the Respondent is bound by it for the same reasons as it is bound by the area contract.

[5] The stipulated record does not establish the full extent to which the Respondent's unilateral changes diverged from the terms of the area agreements.

[6] On February 2, 2005, the Respondent filed a petition for an election with the Region. On February 8, 2005, the Regional Director informed the parties that the petition had been blocked on that date by the filing of the charge in this case. After the complaint was issued, the Regional Director dismissed the petition. No appeal of that dismissal was filed.

expiration of the agreement for termination," confirmed that the 90-day notice period was applicable both to contract termination and to withdrawal of agency authorization. On this basis, the Respondent asserts that it gave timely notice in both respects.

Finally, the Respondent contends that regardless of the applicable notice period, its 2003 notice of termination of "affiliation" with the Union, even though subsequently rescinded, gave the Union and the AECA timely notice of its intent to withdraw agency in 2004.

C. Analysis

The first issue is whether, as the Respondent contends, the reference in the notice language of Section 1.02(a) of the contract to "an employer withdrawing representation" from the AECA had the effect of substituting the notice period in that section—90 days prior to contract expiration—for the 150-day notice requirement for withdrawing negotiating authority from the AECA contained in the earlier-signed letter of assent.

If the contract's notice language did not have that effect, the next issue is whether the Union's October 21, 2003 letter—in which Plott cited section 1.02(a) and stated that the Respondent's earlier notice of termination of "affiliation" had been untimely "[u]nder the terms of the contract"—estops the Union from arguing that the 150-day notice requirement was applicable to withdrawal of agency representation, or waives that argument, or created "special circumstances" that excuse the Respondent's failure to comply with the 150-day requirement. The significance of the Respondent's 2003 attempt to terminate "affiliation" is also at issue.

For the reasons that follow, we conclude that the 150-day notice period in the letter of assent remained in force, that the Union was not estopped from invoking that period, and that the Respondent's 2003 attempt to terminate its AECA "affiliation" has no effect here. Accordingly, the Respondent gave untimely notice of withdrawal from the AECA, was bound by the successor agreements negotiated by the AECA, and violated Section 8(a)(5) by repudiating those agreements and unilaterally changing employment terms.

1. The Board's previous treatment of IBEW assent letters

It is well established that where an employer is contractually bound to a multiemployer bargaining agency relationship, withdrawal from that relationship must be timely and unequivocal. *E.g., Den-Ral, Inc.*, 315 NLRB 538 fn. 2 (1994); *Retail Associates,* 120 NLRB 388, 393 (1958). As the General Counsel emphasizes, the Board has frequently enforced the withdrawal-of-agency requirements in IBEW letters of assent that were identical or virtually identical to the letter of assent at issue here.[7] As the Board noted in 1986, "IBEW local unions have been utilizing letters of assent identical in all material respects to the letter of assent signed by this Employer for over 20 years, and the Board consistently has held that an employer who signs a Letter of Assent-A has agreed to become part of a multiemployer bargaining group." *Vincent Electric*, supra at 903. In enforcing the assent letter, the Board has confirmed that an employer's withdrawal of negotiating authority from a multiemployer association is an action distinct from terminating a contract. See, e.g., *Kirkpatrick Electric*, supra; *Leapley Co.,* supra.[8]

However, as the Respondent emphasizes, the Board's cases to date have not addressed the issue it raises here, i.e., whether the notice language in the parties' 2003 1-year extension superseded the notice language in the assent letter the Respondent had previously signed. The contracts at issue in earlier cases involving the IBEW permitted "a party desiring to change or terminate the agreement" to give written notice within the required period.[9] The notice language in section 1.02(a) of the contract in this case, however, permits "either party or an employer withdrawing representation from the Chapter or not represented by the Chapter desiring to change or terminate this agreement" to give such notice.

2. The contract language

a. "An Employer Withdrawing Representation"

The Respondent, citing the contract-merger principle that a subsequent contract modifies the predecessor contract's conflicting terms on the same subject matter, characterizes the notice language in the assent letter and in the contract's section 1.02(a) as "contradictory" and

[7] See, e.g., *Positive Electrical Enterprises,* 345 NLRB No. 67, slip op. at 2–4 (2005); *Haas Electric*, 334 NLRB 865 (2001), enf. denied on other grounds 299 F.3d 23 (1st Cir. 2002); *Kirkpatrick Electric*, 314 NLRB 1047, 1049–1052 (1994); *P&C Lighting Center*, 301 NLRB 828, 829–831 (1991); *Riley Electric*, 290 NLRB 374, 375 (1988); *Reliable Electric*, 286 NLRB 834, 834–836 (1987), enfd. 12 Fed. Appx. 888 (10th Cir. 2001); *Vincent Electric*, 281 NLRB 903, 903–904 (1986); *Leapley Co.,* 278 NLRB 981, 982–984 (1986); *Watson-Rummell Electric*, 277 NLRB 1401, 1401–1402 (1985), enfd. in relevant part 815 F.2d 29 (6th Cir. 1987); *Central New Mexico Chapter, NECA,* 152 NLRB 1604, 1606–1607 (1965).

[8] The Board has found that IBEW employers were bound by successor multiemployer contracts even where the letter of assent was more narrowly worded than the one the Respondent signed—i.e., where the letter of assent delegated agency for "all matters contained in or pertaining to the current approved contract" (emphasis added), and notice of termination was required at least 150 days before expiration of "the aforementioned" contract. See *P&C Lighting Center*, supra; *Riley Electric*, supra; *Vincent Electric*, supra.

[9] E.g., *Leapley Co.*, supra, 278 NLRB at 982; *Watson-Rummell Electric*, supra, 277 NLRB at 1409; *Central New Mexico Chapter, NECA*, supra, 152 NLRB at 1607.

"inconsistent." This claim is accurate, however, only if, as the Respondent contends, the two notice provisions address the "same subject matter." We find that they do not.

First, the language of section 1.02(a) provides little, if any support, for the Respondent's interpretation. Section 102(a) is plainly intended to establish a notice requirement for termination of the contract. Nothing in that provision suggests that it is intended to address the legally separate issue of the notice requirement for withdrawal from the AECA. Thus, section 1.02(a) identifies who may provide notice to terminate the contract: "either party" (the AECA or the Union) or "an employer withdrawing representation from the Chapter [i.e., the AECA] or not represented by the Chapter." But it does not address how an employer may timely end its relationship with the AECA (a matter governed by the assent letter). Notably, section 1.02(a) does not refer to an employer "desiring" to withdraw representation from the AECA—as it presumably would if it were intended to govern that issue.

Second, it seems highly improbable that section 1.02(a) and its 90-day provision apply to withdrawal of agency from the AECA, considering that section 1.02(a) is satisfied by employer notice to the union alone. If the section referred to withdrawal of agency, one would reasonably expect it to require notice to the AECA—the agent—as well.

Third, given that IBEW and its signatory employers have been using virtually the same letter of assent on a nationwide basis with the Board's approval for over 40 years, it is a reasonable inference that if the parties here had intended to take the major (and divergent) step of abrogating the assent letter's 150-day notice requirement, they would have done so in a more explicit manner. If section 1.02(a) displaced the notice period in the letter of assent, it did so entirely by the insertion of one phrase with no further elaboration. It seems highly unlikely that this was the parties' drafting intention.[10]

[10] By contrast, in *Martin K. Eby Construction,* 1993 WL 1609276 (1993), an administrative law judge's decision cited by the Respondent and not involving IBEW, the employer signed a "contract stipulation" by which it came under the current and future contracts negotiated by the union and the designated employer association, but later signed a "designation of exclusive bargaining representative" by which it delegated negotiating agency to the employer association solely for a "single" successor contract. In addition, the employer association later gave the union timely notice of termination not only of the successor agreement but also of its own agency. The administrative law judge found from this extensive evidence that the employer's later designation superseded the earlier contract stipulation concerning termination of agency. The single phrase added to Sec. 1.02(a) in this case does not carry the weight of the evidence in Eby.

On the other hand, it seems much more plausible (though not established in the stipulated record) that the insertion of the phrase "or an employer withdrawing representation from [the AECA] or not represented by [the AECA]" after "[e]ither party" in section 1.02(a) was intended to recognize more clearly the entire class of employers covered by the contract. Since the only "parties" who were explicitly entitled to give notice of termination under section 1.02(a) in its earlier form were the original signatories (the Union and the AECA) and the AECA's principals, any employer not represented by the AECA who had come under the contract on an individual basis, or who had followed the assent letter's requirements for withdrawal of agency, arguably had no right to seek contract termination. The insertion of the new phrase confirmed that such employers also had that right.

Finally, as the General Counsel notes, the consideration exchanged in the two agreements was not identical. The consideration for the assent letter was the Respondent's delegation of representation agency to the AECA, in exchange for the Union's agreement to bargain with the AECA with respect to the Respondent's unit employees' terms of employment. The consideration for the collective-bargaining agreement was the Respondent's agreement to certain terms of employment in exchange for the unit employees' commitment to work on those terms. Those differing considerations are "clear evidence" that the two contracts are independent and distinct from each other. *GCIU Employer Retirement Fund v. Chicago Tribune Co.,* 66 F.3d 862, 866 (7th Cir. 1995).

For these reasons, it seems clear that the parties, in referring to "an employer withdrawing representation" in section 1.02(a), were actually referring to an employer seeking to terminate the contract who has already taken the required steps to withdraw representation agency from the AECA, and not to an employer still only "desiring" to do so. This interpretation is much more reasonable than the reading urged by the Respondent, which would attribute to the parties an intent of a radical change solely on the basis of the phrase "withdrawing representation." This interpretation also preserves the long-accepted distinct meanings of both the assent letter and section 1.02(a).

b. "Anniversary Date" vs. "Expiration Date"

The Respondent also argues that the assent letter and the contract are in conflict with respect to the specified date from which their respective advance-notice requirements are measured. The assent letter creates a notice period measured from the "then current anniversary date of the applicable approved labor agreement." In turn, section 1.02(a) of the contract establishes a notice

period measured from the "expiration date of the Agreement or any anniversary date occurring thereafter." In the Respondent's view, the different language of the two documents supports its position that the contract established a new, and controlling, notice period for withdrawal of agency. We disagree.

The premise of the Respondent's argument is that the two documents address the same subject: withdrawal of agency. We have already rejected that view. It is the assent letter that governs withdrawal of agency. Section 1.02(a) of the contract governs only contract termination. Thus, an employer seeking both to withdraw from the AECA and to terminate the contract must comply with the separate notice requirements that apply to the separate steps of withdrawal and termination. The two notice periods need not be synchronous or otherwise correspond.

It does not appear that the difference in wording between the letter of assent and the contract has the significance the Respondent attributes to it. As explicitly suggested by section 1.02(a), it appears much more likely that the references to "anniversary date" in each document were to the expiration date and anniversary dates following "thereafter," perhaps in consideration of extended negotiations for a successor agreement or to interim extensions. In any case, the Respondent's distinction does not, by itself, support a reading that section 1.02(a)'s preexpiration notice period is inconsistent with the assent letter's notice period for withdrawal of representation agency.

In short, although the contract terms in dispute do not present a model of clarity, section 1.02(a) cannot fairly be read to supersede the letter of assent with respect to the applicable notice period for withdrawing representation agency. The Respondent's attempt to withdraw agency from the AECA in May 2004 was therefore untimely under the terms of the assent letter.

3. The Plott letter

The Respondent contends that the October 21, 2003 letter from Union Business Manager Plott confirmed that the applicable notice period for withdrawal of representation agency was 90 rather than 150 days, and that it "relied" on Plott's "insistence" to that effect. However, this ignores both the Respondent's own September 28, 2003 notice of termination of its "affiliation" with the Union, to which Plott's letter responded, and the time at which the correspondence occurred.

As noted above, the contract that covered the Respondent from 2000 to 2003 expired on August 31, 2003. Accordingly, in order to avoid being covered by the 1-year extension of the contract that the Union and the AECA finalized on September 2, 2003, the Respondent was required to give notice of termination of the contract at least 90 days before August 31, 2003, and of termination of the AECA's representation agency at least 150 days before that date.[11] Since the Respondent did not send its first notice to the Union until September 28, 2003, the notice was untimely for either purpose. The Union therefore needed to cite only one of those two bases to establish that the notice was invalid.

It must be borne in mind that there are two separate matters here, viz., the contract between the Respondent and the Union, and the agency relationship between the Respondent and the AECA. The former had a 90-day cancellation provision, and the latter had a 150-day cancellation provision. The Respondent's letter of September 28, reasonably read, referred only to the contract. It spoke of a termination of its affiliation with the Union as a signatory contractor. Further, the letter was sent only to the Union, not to the AECA. Thus, the implication was that only the contract was involved. Accordingly, the Union's response of October 21 likewise referred only to the contract. In these circumstances, it was unreasonable and incorrect for the Respondent to treat the Union's letter of October 21 as an indication that the 90-day period applied to the agency relationship between the Respondent and AECA.

In short, given the imprecision of the Respondent's own 2003 notice, it would be highly unfair to read the statements in Plott's letter that "[u]nder the terms of the [2003–2004 extension agreement], the September 28, 2003 notice was not timely," and that "[p]ursuant to Section 1.02(a), your firm should have given at least 90 days notice prior to the expiration date of the agreement for termination," as referring to the required notice period for terminating AECA's agency. Moreover, as the General Counsel points out, Plott's statements were accurate. It would therefore be even less fair to treat the Plott letter as an affirmative representation, on which the Respondent reasonably could have relied, that the notice period for terminating agency was 90 rather than 150 days. The Plott letter therefore does not provide a basis for estopping the Union from arguing that the notice period with respect to agency termination was still 150 days. Nor does it provide grounds for finding that the Union waived its right to make that argument, or that "special circumstances" permitted the Respondent to ignore the longer notice requirement in 2004.

[11] We note that the Respondent has not contended that the letter of assent was superseded until September 2003, when the Union and the AECA reached agreement on the 1-year extension—even though the terms of sec. 1.02(a) in the 2003 extension were identical to those in the preceding 2000–2003 contract.

4. The 2003 notice

Finally, the Respondent contends that its September 28, 2003 notice, even though untimely for the purpose of withdrawing agency in 2003, put the Union and the AECA on notice of its intent to withdraw that continued into 2004, and that its May 27 notice was therefore timely "regardless of whether the Letter of Assent or the Agreement is deemed controlling." Even assuming arguendo that the 2003 notice could have had the continuing significance the Respondent attributes to it, that potential was entirely negated by the Respondent's explicit rescission of that notice on November 20, 2003, with the accompanying statement of its "intent to remain as a Signatory Contractor."

It follows that the Respondent's attempt to withdraw its delegation of agency to the AECA was untimely. Therefore, the Respondent's subsequent actions in ignoring or unilaterally changing the terms of the contracts negotiated on its behalf by the AECA violated Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

1. Respondent Rome Electrical Systems, Inc. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(a)(5) of the Act by

(a) Withdrawing authorization from the AECA to represent Respondent in multiemployer bargaining with the Union at a time when the Respondent was obligated to bargain through the Association on a multiemployer basis;

(b) Insisting on bargaining with the Union on an individual basis at a time when the Respondent was obligated to bargain through the Association on a multiemployer basis;

(c) Unilaterally changing terms and conditions of employment and failing to abide by the area collective-bargaining agreements negotiated on its behalf by the AECA.

REMEDY

Having found that the Respondent violated Section 8(a)(5) of the Act, we shall order it to cease and desist and to take certain affirmative action necessary to effectuate the policies of the Act. Specifically, we shall order the Respondent to recognize and honor the area agreements that the AECA was authorized to negotiate on its behalf until the Respondent withdraws those authorizations in accordance with the terms of the letter of assent, or by mutual consent of the parties, or in accordance with the law. We shall also require the Respondent to notify the Union and the AECA that it will so recognize the area agreements, to make whole all individuals and benefit funds for any losses suffered, if any, as a result of its unlawful failure to adhere to those agreements,[12] and to post an appropriate notice.

ORDER

The Respondent, Rome Electrical Systems, Inc., Rome, Georgia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively with International Brotherhood of Electrical Workers, Local 613, AFL–CIO or any other union representing an appropriate unit of its employees, by

(1) Withdrawing authorization from the Atlanta, Georgia Chapter, National Electrical Contractors Association to represent Respondent in multiemployer bargaining with the Union at a time when Respondent is obligated to bargain through the Association on a multiemployer basis.

(2) Insisting on bargaining with the Union on an individual basis at a time when Respondent is obligated to bargain through the Association on a multiemployer basis.

(3) Unilaterally changing terms and conditions of employment and refusing to abide by and honor collective-bargaining agreements negotiated by the Association with the Union at a time when Respondent is represented by the Association or to which Respondent has agreed to be bound.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Notify the Association and the Union, in writing, that the Respondent continues to authorize the Associa-

[12] Backpay for those individuals, if any, denied employment as a result of the Respondent's unlawful conduct shall be calculated in accordance with *F. W. Woolworth*, 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Backpay for individuals, if any, not denied or separated from employment but who nonetheless suffered losses as a result of the Respondent's unlawful conduct shall be calculated in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as computed in *New Horizons for the Retarded*, supra. In making whole the benefit funds, the Respondent shall also contribute any additional amounts due to the funds in accordance with *Merryweather Optical Co.,* 240 NLRB 1213, 1216 (1979). The Respondent shall also reimburse unit employees for any expenses resulting from its failure, if any, to make required payments to the funds, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981).

tion to represent it in bargaining with the Union, in accordance with the Letter of Assent-A executed by the Respondent on December 20, 1989, and that it will continue to authorize the Association to represent it in collective bargaining until such time as that authorization may be withdrawn in accordance with the terms of the Letter of Assent, or by mutual consent of the parties, or in accordance with the law.

(b) Make whole any employees in the bargaining unit and any other individuals, if any, who were denied an opportunity to work, for any losses suffered as a result of its failure to adhere to contracts negotiated by the Association on its behalf at a time when Respondent was represented by the Association; reimburse those individuals for any expenses resulting from any failure to make contributions to benefits funds required under those contracts; and make all required benefit fund payments or contributions, if any, that have not been made since about August 31, 2004—all as set forth in the remedy section of this Decision and Order.

(c) Offer full and immediate employment to any hiring hall applicants who were denied the opportunity to work for Respondent because of Respondent's failure to comply with contracts negotiated by the Association on its behalf at a time when Respondent was represented by the Association.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its operations in Atlanta, Georgia, copies of the attached notice marked "Appendix."[13] Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 31, 2004.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. April 12, 2007

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Peter N. Kirsanow Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT withdraw, or attempt to withdraw, authorization from the Atlanta, Georgia, Chapter, National Electrical Contractors Association to bargain with International Brotherhood of Electrical Workers, Local 613, AFL–CIO on our behalf, or attempt to bargain with Local 613 on an individual basis, until such time as we may, by law or by agreement, do so.

WE WILL NOT refuse to abide by collective-bargaining agreements negotiated by the Association with the Union

[13] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

on our behalf while we are represented by the Association.

WE WILL NOT in any like or related manner refuse to bargain with the Union for employees of the Company in an appropriate unit that the Union represents, or interfere with, restrain, or coerce employees in the exercise of the rights set forth above.

WE WILL bargain collectively through the Association with IBEW Local 613 for collective-bargaining contracts covering our employees, and abide by such contracts, until we are no longer obligated by agreement, or by law, to do so.

WE WILL make whole employees and any individuals who were denied an opportunity to work for any losses they suffered, and reimburse those individuals and any benefit funds for any expenses incurred, as a result of our failure to adhere to contracts negotiated by the Association on our behalf at a time when we were represented by the Association.

WE WILL offer full and immediate employment to any hiring hall applicants who were denied the opportunity to work for us because of our failure to comply with contracts negotiated by the Association on our behalf at a time when we were represented by the Association.

ROME ELECTRICAL SYSTEMS, INC.